

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

DAVID W.,

Plaintiff,

v.

Civil Action No.
5:22-CV-0462 (DEP)

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF

AMDURSKY, PELKY LAW FIRM
26 East Oneida Street
Oswego, NY 13126

AMY CHADWICK, ESQ.

FOR DEFENDANT

SOCIAL SECURITY ADMIN.
OFFICE OF GENERAL COUNSEL
6401 Security Boulevard
Baltimore, MD 21235

HEETANO SHAMSOONDAR, ESQ.

DAVID E. PEEBLES
U.S. MAGISTRATE JUDGE

ORDER

Currently pending before the court in this action, in which plaintiff seeks judicial review of an adverse administrative determination by the Commissioner of Social Security ("Commissioner"), pursuant to 42 U.S.C.

§§ 405(g) and 1383(c)(3), are cross-motions for judgment on the pleadings.¹ Oral argument was heard in connection with those motions on July 13, 2023, during a telephone conference conducted on the record. At the close of argument, I issued a bench decision in which, after applying the requisite deferential review standard, I found that the Commissioner's determination resulted from the application of proper legal principles and is supported by substantial evidence, providing further detail regarding my reasoning and addressing the specific issues raised by the plaintiff in this appeal.

After due deliberation, and based upon the court's oral bench decision, which has been transcribed, is attached to this order, and is incorporated herein by reference, it is hereby

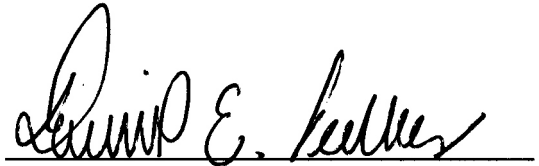
ORDERED, as follows:

- 1) Defendant's motion for judgment on the pleadings is GRANTED.
- 2) The Commissioner's determination that the plaintiff was not

¹ This matter, which is before me on consent of the parties pursuant to 28 U.S.C. § 636(c), has been treated in accordance with the procedures set forth in General Order No. 18. Under that General Order, once issue has been joined, an action such as this is considered procedurally as if cross-motions for judgment on the pleadings had been filed pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

disabled at the relevant times, and thus is not entitled to benefits under the Social Security Act, is AFFIRMED.

3) The clerk is respectfully directed to enter judgment, based upon this determination, DISMISSING plaintiff's complaint in its entirety.

A handwritten signature in black ink, appearing to read "David E. Peebles", written over a horizontal line.

David E. Peebles
U.S. Magistrate Judge

Dated: July 17, 2023
Syracuse, NY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----x
DAVID W.,

Plaintiff,

-v-

5:22-CV-462

COMMISSIONER OF SOCIAL SECURITY,

Defendant.
-----x

DECISION TRANSCRIPT
BEFORE THE HONORABLE DAVID E. PEEBLES
July 13, 2023
100 South Clinton Street, Syracuse, New York

For the Plaintiff:

AMDURSKY, PELKY LAW FIRM
26 East Oneida Street
Oswego, New York 13126
BY: **AMY CHADWICK, ESQ.**

For the Defendant:

SOCIAL SECURITY ADMINISTRATION
6401 Security Boulevard
Baltimore, Maryland 21235
BY: **HEETANO SHAMSOONDAR, ESQ.**

Hannah F. Cavanaugh, RPR, CRR, CSR, NYACR, NYRCR
Official United States Court Reporter
100 South Clinton Street
Syracuse, New York 13261-7367
(315) 234-8545

1 (The Court and all counsel present by video: Time
2 noted: 11:31 a.m.)

3 THE COURT: All right. Let me begin by thanking
4 counsel for excellent presentations. I've enjoyed working with
5 you and found this case to be fascinating.

6 I have before me a challenge by plaintiff to an
7 adverse determination by the Commissioner of Social Security
8 finding that he was not disabled at the relevant times and
9 therefore ineligible for the benefits for which he applied.

10 The background is as follows: Plaintiff's date of
11 birth is August of 1972. He is currently 50 years old. He was
12 46 years old at the time of his application for benefits on
13 March 26, 2019. He stands 5'6" in height and weighed at various
14 times between 240 and 266 pounds. Plaintiff lives in Oswego
15 with his mother and he has previously lived in Fulton.

16 Plaintiff has a girlfriend who lives nearby. Plaintiff has an
17 8th grade education and, while in school, was placed in special
18 education. He testified that he can read and write, but he has
19 comprehension issues. Plaintiff is learning to drive. His
20 girlfriend is teaching him, or was, at the time of the hearing.

21 Plaintiff stopped working in September of 2006. From
22 2000 to 2006, he worked as a laborer at a car wash. In the
23 past, he has also cut hair and worked briefly in sales at a
24 RadioShack outlet.

25 Mentally, plaintiff suffers from major depressive

1 disorder, anxiety disorder, posttraumatic stress disorder, or
2 PTSD, schizoaffective disorder, personality disorder, a learning
3 disability, intellectual disability, claustrophobia, and
4 substance and cannabis use and abuse. Plaintiff suffers at
5 various times from audio and visual delusions and
6 hallucinations.

7 Plaintiff has at least one prior suicide attempt,
8 although, at page 1240 of the Administrative Transcript, there's
9 a reference to as many as four efforts to commit suicide by
10 cutting his wrists. Plaintiff has, in the past, expressed some
11 suicidal ideation, mostly described as passive, although many,
12 if not most, of the treatment records that I reviewed show no
13 suicidal or homicidal ideation.

14 Physically, plaintiff suffers from obesity, also
15 vasovagal syncope, which I understand is a condition that leads
16 to fainting. It's usually not harmful and not a sign of a more
17 serious problem. It has to do with the nerves that connect the
18 heart and blood vessels. The plaintiff also suffers from neck
19 pain, lumbago, hypertension, hyperlipidemia, and in September of
20 2019, he fractured his fourth metacarpal bone.

21 Plaintiff has received services from Oswego Hospital
22 Behavioral Services for over 25 years. He sees Physician's
23 Assistant Amy McCune and LMSW Rhonda O'Connor bi-weekly,
24 although, there were other therapists that came before Ms.
25 O'Connor. Plaintiff has been hospitalized three times. The

1 latest was in February of 2019.

2 In terms of activities of daily living, plaintiff is
3 able to dress, bathe, groom, cook, clean, do laundry, he shops
4 every two weeks, he can use public transportation, he watches
5 television, listens to the radio, he mixes music, he plays card
6 and board games, he cares for their pet cat, he attends church,
7 and states that he gets along with family and friends.
8 Plaintiff smokes marijuana twice daily, which he claims helps
9 with panic attacks, PTSD, and hallucinations. He is a former
10 cigarette smoker, but does not currently, at least at the time
11 of the hearing, smoke cigarettes.

12 Procedurally, plaintiff applied for Title XVI
13 Supplemental Security Income benefits on March 26, 2019,
14 alleging an original onset date of September 30, 2006. That, of
15 course, was amended to the date of his application. I note that
16 there was, apparently, a prior application filed by the
17 plaintiff on December 18, 2014. That was denied at the
18 Administrative Law Judge level on December 14, 2016.

19 In support of his Title XVI application, plaintiff
20 claimed to be disabled due to PTSD, anxiety, bipolar disorder,
21 and high blood pressure. That is at 336 of the Administrative
22 Transcript. A hearing was conducted on April 6, 2021, by
23 Administrative Law Judge, or ALJ, Jennifer Gale Smith. A
24 vocational expert, as well as the plaintiff, testified at that
25 hearing.

1 On April 14, 2021, ALJ Smith issued an adverse
2 determination, finding that plaintiff was not disabled at the
3 relevant times. That became a final determination of the agency
4 on March 22, 2022, when the Social Security Administration
5 Appeals Council denied plaintiff's request for a review of that
6 finding. This action was commenced on May 5, 2020, and is
7 timely.

8 In her decision, ALJ Smith applied the familiar
9 five-step sequential test for determining disability. At step
10 one, she noted that plaintiff had not engaged in substantial
11 gainful activity since the date of his application.

12 At step two, she concluded that plaintiff does suffer
13 from severe impairments that impose more than minimal
14 limitations on his ability to perform basic work functions,
15 including vasovagal syncope, obesity, major depressive disorder,
16 anxiety disorder, posttraumatic stress disorder, schizoaffective
17 disorder, personality disorder, learning disability,
18 intellectual disability, and history of substance abuse and
19 cannabis abuse.

20 Proceeding to step three, the Administrative Law
21 Judge concluded that plaintiff's conditions do not meet or
22 medically equal any of the listed presumptively disabling
23 conditions considering listing 11.02, as well as the various
24 listings in part 12. In making that finding, the Administrative
25 Law Judge went through the psychiatric review technique,

1 examined the so-called B criteria of the listings, and concluded
2 that plaintiff has moderate limitations in all four of the
3 relevant domains and no extreme or marked limitations.

4 The Administrative Law Judge then analyzed the
5 record, including the medical opinions contained in the record,
6 as well as considering plaintiff's subjective reports of
7 symptomology. At step 4 -- well, I take that back. She then
8 concluded that plaintiff retains the residual functional
9 capacity to perform light work with a physical limitation, which
10 is not relevant to our discussion, as well as significant
11 limitations on the mental capacity of the plaintiff, noting that
12 claimant should work at simple, routine, and repetitive tasks.
13 Claimant should work in a low stress job defined as occasional
14 decisionmaking, occasional judgment required, and occasional
15 changes in the work setting. Claimant should work at goal
16 oriented work rather than production pace rate work. Claimant
17 should have occasional contact with coworkers, supervisors, and
18 the public. The claimant should work at a job with a language
19 GED of one. The claimant should have no more than occasional
20 concentrated exposure to respiratory irritants such as dust,
21 odors, smoke, fumes, and gases.

22 Applying that residual functional capacity at step
23 four, ALJ Smith concluded that plaintiff did not have any past
24 relevant work to consider and proceeded to step five where, with
25 the benefit of a vocational expert's testimony, she concluded

1 that plaintiff is capable of performing available work in the
2 national economy, citing as representative positions those of
3 garment sorter, laundry worker, and sorter (agricultural
4 produce) and, therefore, concluded that plaintiff was not
5 disabled at the relevant times.

6 As you know, the Court's function at this juncture is
7 limited to determining whether correct legal principles were
8 applied and the resulting determination is supported by
9 substantial evidence, which is defined as such relevant evidence
10 as a reasonable person would conclude sufficient to support a
11 fact. The Second Circuit Court of Appeals has observed the
12 deferential nature of this standard in *Brault v. Social Security*
13 *Administration Commissioner*, 683 F.3d 443 from the Second
14 Circuit, 2012, more recently affirmed, or reaffirmed, in *Schillo*
15 *v. Kijakazi*, 31 F.4d 64 from April 6, 2022. In those decisions,
16 the Second Circuit noted that it is an extremely deferential
17 standard, even more so than the clearly erroneous standard that
18 lawyers are familiar with. In *Brault*, the Court observed that
19 the substantial evidence standard means once an ALJ finds a
20 fact, it can be rejected only if a reasonable factfinder would
21 have to conclude otherwise.

22 In this matter, plaintiff raises several contentions,
23 some of which are intertwined. He challenges the Administrative
24 Law Judge's listings analysis under part B of the relevant
25 listings and concludes that he has either extreme or marked

1 limitations in the domains of concentration, persistence, and
2 pace and adapting and managing oneself. He also contends that
3 the Administrative Law Judge, when reviewing the records to
4 support her conclusion, essentially cherry picked and recounted
5 an inaccurate and incomplete recitation of the mental health
6 records. He also challenges the weight provided to the various
7 medical opinions in the record and argues that it was improper
8 to elevate the opinions of the state administrative determiners
9 and the examining consultative doctor, Dr. Shapiro, over
10 plaintiff's therapist.

11 She also -- he also challenges the evaluation of
12 plaintiff's symptoms and concludes that the residual functional
13 capacity finding is flawed and that the Administrative Law Judge
14 should have accepted therapist O'Connor's opinion, particularly
15 in the areas of being off task and being absent from work.

16 I'll make two observations before I analyze the
17 Court's thinking.

18 First, it is plaintiff's burden through step four to
19 prove disability and, of course, at step five, we know that the
20 burden shifts to the Commissioner.

21 Second, this is an extremely limiting residual
22 functional capacity finding, particularly from a mental health
23 point of view, and the focus of plaintiff's challenge is on the
24 mental aspects of the RFC finding.

25 Turning first to the listings argument, the

1 psychiatric review technique under the listings examines four
2 domains, which include the understanding, remembering, or
3 applying information; interacting with others; concentration,
4 persistence, and maintaining pace; and adapting or managing
5 oneself. Under the B criteria, there must either be an extreme
6 limitation in one of those four areas or marked limitations in
7 two of those areas.

8 The definitions of extreme limitation is the
9 inability to function independently, appropriately, or
10 effectively, and on a sustained basis. Marked limitation is
11 defined under those regulations as being seriously limited in
12 the ability to function independently, appropriately, or
13 effectively, and on a sustained basis in the particular domain.
14 In this case, the Administrative Law Judge outlined her findings
15 regarding the B criteria at pages 14 and 15 of the
16 Administrative Transcript, finding moderate limitation in all
17 four. In arriving at that conclusion, she relied on treatment
18 provider notes, the consultative examination report of Dr.
19 Shapiro, plaintiff's fairly robust activities of daily living,
20 and his function report.

21 The finding is clearly supported by the state
22 administrative determination of Dr. E. Kamin on July 1, 2019.
23 At page 103 of the Administrative Transcript, Dr. Kamin
24 concludes that plaintiff has moderate limitations in
25 understanding, remembering, and applying information and in

1 concentration, persistence, and pace, and mild limitations in
2 interacting with others and adapting or managing oneself. That
3 finding was affirmed later by Dr. G. Brown on October 2, 2019.
4 That appears at page 1133 of the Administrative Transcript. So
5 there is -- there is evidence to support the listing
6 determination of the Administrative Law Judge.

7 The Court -- I'll note in passing that the
8 Administrative Law Judge found that subsection A of 12.04 was
9 not met and that the C criteria of the various listings were not
10 met and plaintiff has not challenged those findings, and any
11 such challenge would now be waived.

12 In essence, plaintiff is asking the Court to reweigh
13 the evidence in his favor, something that is improper. I have
14 reviewed carefully the evidence cited by the Administrative Law
15 Judge and find that the determination is supported by
16 substantial evidence and plaintiff cannot show that a reasonable
17 factfinder would have had to reach an opposite conclusion.

18 The next challenge concerns the evaluation of mental
19 health treatment records. After reviewing the records, the
20 Administrative Law Judge found that despite numerous diagnoses,
21 the claimant's mental status examinations had been, for the most
22 part, within normal limits, though his mood is, at times,
23 anxious or depressed. She also noted that to the extent that
24 the claimant has reported hallucinations, he has reported that
25 they're not threatening. This finding was at page 17 of the

1 Administrative Transcript.

2 The Administrative Law Judge has somewhat of a
3 cursory discussion of the relevant records. The treatment
4 records, which I have reviewed carefully, appear at Exhibits 1F,
5 2F, 3F, 5F, 12F, 16F, 18F, 19F, 21F, and 23F. Many show,
6 indeed, normal exams. In many cases, hallucinations and
7 delusions are denied. In others, while they are mentioned, they
8 are listed as non-threatening. For the most part, suicidal
9 ideation is denied, although there were a couple references to
10 passive suicidal ideation. There are a few outliers, but for
11 the most part, those records support the determination. I've
12 reviewed them carefully and many, many, many of the findings
13 noted in the exhibits that I just mentioned show normal exams,
14 denial of delusions and hallucinations and paranoia. He was
15 advised to quit marijuana on November 2, 2016. That's at page
16 445. There are indications of hallucinations and delusions, but
17 nothing that plaintiff can't handle, I think was the one
18 reference that I saw.

19 So I don't find any error in the Administrative Law
20 Judge's reliance upon the mental health treatment records and
21 that what the plaintiff is seeking is to have the Court reweigh
22 the evidence, which is something that I'm not prepared to do. I
23 find that substantial evidence supports the residual functional
24 capacity and mental health component and am unable to say that
25 no reasonable factfinder could reach the RFC of the

1 Administrative Law Judge based upon the treatment notes.

2 The next argument centers upon the treatment of
3 medical opinion evidence in the record. Because the application
4 for benefits was filed after March of 2017, the case is governed
5 by the amended regulations which took effect for applications
6 filed after that date. Under those regulations, an ALJ does not
7 defer or give any specific evidentiary weight, including
8 controlling weight, to any medical opinions or prior
9 administrative medical findings, including those from a treating
10 medical source. Instead, the ALJ must consider the opinions
11 using the relevant factors specified, particularly considering
12 and articulating in the decision how supportability and
13 consistency of those opinions is found. The ALJ is also
14 permitted, but not required, to explain how he or she considered
15 the other relevant factors, which include the source's
16 relationship with the claimant, specialization of the source, if
17 any, and other factors tending to support or contradict the
18 medical opinion.

19 In this case, I've discussed already Dr. Kamin's
20 opinion from July 1, 2019. It's at page 97 to 109 of the
21 record. It was affirmed by Dr. Brown at 14F. The
22 Administrative Law Judge found it to be persuasive, but found
23 greater limitations than those determined by Dr. Kamin. That's
24 at page 19. The discussion of Dr. Kamin's opinion could have
25 been somewhat more fulsome, but I believe it adequately

1 addresses the two required conditions of supportability and
2 consistency.

3 Dr. Shapiro prepared a report based upon her
4 examination of the plaintiff on June 24, 2019. It appears at
5 984 to 988 of the Administrative Transcript. The medical source
6 statement finds no limitations in certain areas, mild to
7 moderate limitations in understanding, remembering, or applying
8 complex directions and instructions, mild to moderate
9 limitations using reasoning and judgment to make work-related
10 decisions, mild to moderate limitations in interacting
11 adequately with supervisors, coworkers, and the public, mild to
12 moderate limitations sustaining concentration and performing a
13 task at a consistent pace, no limitations on sustaining an
14 ordinary routine and regular attendance at work, moderate
15 limitation regulating emotions, no limitations maintaining
16 personal hygiene and wearing appropriate attire, no limitations
17 being aware of normal hazards and taking appropriate
18 precautions, fully supportive of the residual functional
19 capacity determination and consistent with both the treatment
20 notes that were reviewed and Dr. Kamin's opinion.

21 In my view, the request now of the plaintiff is
22 simply asking that the Court reweigh the evidence differently,
23 something that I'm not inclined to do, nor should I under *Veino*
24 *v. Barnhart*, 312 F.3d 578 from the Second Circuit, December 10,
25 2002. The RFC is even more limiting like it was with regard to

1 Dr. Kamin. It's also more limiting than Dr. Shapiro's opinion.
2 Therapist O'Connor gave an opinion on March 10, 2020.
3 It appears at pages 1174 to 1179 of the Administrative
4 Transcript. It is extremely limiting. It finds extreme
5 limitation in several areas, including completing a normal
6 workday and workweek without interruptions from
7 psychologically-based symptoms, and perform at a consistent pace
8 without an unreasonable number and length of rest periods, and
9 an extreme limitation is noted in other areas, as well. That's
10 defined as not able to function in this area independently,
11 appropriately, effectively and on a sustained basis. This
12 represents a degree of limitation not compatible with any
13 gainful activity. There are also four findings of marked
14 limitation, which is defined that functioning in this area
15 independently, appropriately, effectively, and on a sustained
16 basis is seriously limited. It is clearly inconsistent with the
17 residual functional capacity determination.

18 Therapist O'Connor also opined that plaintiff is
19 likely to be absent from work five days or more and off task
20 more than 30 percent of the workday. The Administrative Law
21 Judge examined that opinion on page 19 of the transcript. It's
22 noted that it is a checkbox opinion form, and although I know
23 from the Second Circuit's decision in *Hogan* that that is not in
24 and of itself alone a basis to reject the opinion, it is still a
25 consideration if it does not include an explanation that would

1 correlate the limitations to plaintiff's condition.

2 The Administrative Law Judge found it to be
3 inconsistent with even therapist O'Connor's findings, the
4 faithful attendance at therapy, the desire to attend group
5 sessions, and inconsistent with the opinions of Doctors Shapiro,
6 Kamin, and Brown. I don't find any error in the evaluation of
7 therapist O'Connor's opinion.

8 The last issue raised essentially concerns the
9 examination and evaluation of plaintiff's subjective reports of
10 symptomology. It is well known that that examination is made
11 pursuant to the guidelines set out in Social Security Ruling, or
12 SSR, 16-3p and the evaluation is two-step.

13 In the first step, Administrative Law Judge Smith
14 found that plaintiff's conditions could reasonably be expected
15 to result in the limitations claimed by the plaintiff, but found
16 that the plaintiff's claims were not fully supported. And in
17 doing that, he looked at the relevant factors, including daily
18 activities; location, duration, frequency, and intensity of pain
19 or other symptoms; factors that precipitate or aggravate the
20 claimant's symptoms; type, dosage, effectiveness, and side
21 effects of medication; treatment other than medication used to
22 relieve the symptoms; and other measures to obtain relief of
23 symptoms; and any other factors. Although, when it is read as a
24 whole, there are various explanations given. The summary of
25 what the Administrative Law Judge found is at the bottom of page

1 19 and the top of page 20, and there's also explanation on 18,
2 which observes what plaintiff's activities of daily living are
3 and the conclusion of the Administrative Law Judge that they do
4 not support the allegations of the plaintiff regarding
5 intensity, persistence, and limiting effect of his conditions.
6 Plaintiff has a very broad array of activities of daily living
7 that don't support his claims of extreme limitations.

8 I don't find any error in the evaluation of
9 plaintiff's subjective symptomology and I don't conclude that a
10 reasonable factfinder would have to conclude otherwise.

11 The last argument is really derivative of the prior
12 claims, the claim being that at step five, the residual
13 functional capacity -- there should have been a finding of
14 disability if the residual functional capacity had been more
15 closely aligned with therapist O'Connor's opinion.

16 So in summary, I find that correct legal principles
17 were applied and the resulting determination is supported by
18 substantial evidence. I'll grant judgment to the defendant and
19 order dismissal of plaintiff's complaint.

20 Thank you, both, for excellent presentations. I hope
21 you enjoy the rest of your summer.

22 MS. CHADWICK: Thank you. You, too, your Honor.

23 MR. SHAMSOONDAR: Thank you, your Honor. You, as
24 well.

25 (Time noted: 12:01 p.m.)

CERTIFICATE OF OFFICIAL REPORTER

I, HANNAH F. CAVANAUGH, RPR, CRR, CSR, NYACR, NYRCR, Official U.S. Court Reporter, in and for the United States District Court for the Northern District of New York, DO HEREBY CERTIFY that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 14th day of July, 2023.

s/ Hannah F. Cavanaugh

HANNAH F. CAVANAUGH, RPR, CRR, CSR, NYACR, NYRCR
Official U.S. Court Reporter